

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DOUGLAS E GALLAGHER,
Plaintiff,

v.

DEPARTMENT OF CORRECTIONS, et
al.,
Defendants.

CASE NO. C16-5088-RBL-KLS

ORDER DENYING MOTION FOR
COUNSEL

Before the Court is Plaintiff Douglas Gallagher's motion for the appointment of counsel. Dkt 32. Mr. Gallagher states that he requires counsel to help him in his case because the issues are complex, he has demanded a jury trial, he requires assistance with counsel, and he has no legal education. Dkt. 32-1 at 1.

DISCUSSION

There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983. Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party proceeding *in forma pauperis*, the court may do so only in exceptional circumstances. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires an evaluation of both the likelihood of success on the merits and the

1 ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues
2 involved. *Wilborn*, 789 F.2d at 1331. Neither of these factors is dispositive and both must be
3 viewed together before reaching a decision on request of counsel under Section 1915(d). *Id.*

4 Plaintiff has demonstrated an adequate ability to articulate his claims *pro se* but has not
5 demonstrated that the issues involved in this case are complex. Plaintiff's incarceration and
6 limited legal training are not exceptional factors constituting exceptional circumstances that
7 warrant the appointment of counsel. Rather, they are the type of difficulties encountered by
8 many *pro se* litigants. Plaintiff has also not shown a likelihood of success on the merits. *See*,
9 *e.g.*, *Wilborn*, 789 F.2d at 1331.

10 Accordingly, it is **ORDERED**:

11 (1) Plaintiff's motion for the appointment of counsel (Dkt. 32) is **DENIED**.

12 (2) The Clerk of Court is directed to send a copy of this Order to plaintiff and to
13 counsel for defendants.

14 Dated this 18th day of January, 2017.

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17 Karen L. Strombom
18 United States Magistrate Judge
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